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HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
MISCELLANEOUS APPEAL NO.418 OF 2005

Appellant : Defendant - 1	Murari Lal Bajpai, Aged 61 years, S/o Shri SP Bajpai, Cultivator, R/o Village Tendoomudi, Tah:Dabhara, Dist Janjgir - Champa (CG)

Vs.

Respondents: Plaintiff	1. Smt Parwati Bai (Dead), Shri Komal Bajpai, Aged 33 years, S/o Shri SL Bajpai, R/o Subhash Nagar, Gondpara, Tah - Dist Bilaspur (CG)
Defendant -2	2. The Branch Manager, State Bank of India, Branch : Railway Colony, Bilaspur (CG)

PRESENT:

Shri Anurag Dayal Shrivastava, counsel for the appellant.
Shri HS Patel, Counsel for the respondents.

ORDER

(Passed on 09.09.2005)

This appeal has been directed against the judgment and decree dated 03.01.2005 passed by District Judge, Bilaspur in Civil Appeal No.4/2004 whereby the judgment and decree dated 30.07.2004 passed by First Civil Judge Class-I Bilaspur in Civil Suit No.77-A/99 has been set aside and the case has been remanded for trial.

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2) Smt Parwati Bai, (dead) filed a Civil Suit for declaration and injunction alleging that she alone is the owner, entitled for TDR No.48178, issued for a sum of Rs.36,000/- (Rupees thirty six thousand only) and defendant No.2, the concerned Bank shall pay the amount exclusively to her. She pleaded that, the amount of Rs.36,000/- was deposited by her but, while renewing TDR, defendant No.1 got his name entered therein. During pendency of the suit, Parwati Bai died and on the basis of Will in the capacity of legal representatives, Komal Bajpai has been substituted in place of Smt Parwati Bai. Defendant No.1 did not dispute the fact that disputed TDR No.48178 has been in his possession and the same has been in the joint name of Parwati Bai and himself. The said TDR has been issued for a sum of Rs.36,000/-. Defendant No.1 pleaded that on 02.06.1996, he paid Rs.36,000/- to Parwati Bai and in lieu of that it was agreed between them that at the time of encashment of TDR defendant No.1 shall be entitled to receive half of the amount i.e. Rs.18,000/- (Rupees eighteen thousand only) and with the concurrence of Parwati Bai, got renewed the TDR in the joint name of Parwati Bai and himself. Defendant No.1 denied the claim of present plaintiff Komal Bajpai and raised legal objection that without probate or letters of administration the plaintiff has no right to proceed with the case. Defendant No.2 in his reply pleaded that competent Court

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has to declare and decide the entitlement to receive the amount of the concerned TDR.

3) Contention raised by learned counsel appearing for the appellant is that when the Appellate Court held that for want of production of the TDR, the suit could not be decided suitably, then, it was incumbent upon the First Appellate Court to hold the suit liable to be dismissed on that count. On the contrary, learned counsel appearing for the plaintiff / respondent No.1 submits that so far as production of TDR in question is concerned, it is in possession of the defendant No.1 / appellant. Apart from that, admittedly, the TDR has been issued for a sum of Rs.36,000/- and it bears joint name of Parwati Bai and the appellant Murari Lal, therefore, the facts admitted need not be proved by production of the said document.

4) In the judgment at para-2, un-disputed facts have been mentioned and according to that, TDR bearing No.514604 was issued by the Bank i.e. defendant No.2 on 05.06.1989 in the name of Parwati Bai for a sum of Rs.36,000/- for a period of seven years. After renewal, the said TDR bears No.048178 and has been renewed for the period from 05.06.1996 to 05.06.2000 and the same is in the custody of the appellant/defendant No.1. In the judgment at para-4, the plaintiff's case has been described. The Plaintiff has averred that the appellant/defendant No.1 has got his name recorded jointly in the

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said TDR. Para-6 of the judgment relates to the pleading of appellant/defendant No.1. Appellant/defendant No.1 admits that the TDR is in the joint names of Parwati Bai and himself and it is in his custody.

5) Apparently, both the parties admit the issuance of TDR in the joint names of Parwati Bai and Murari Lal, therefore, when there is no dispute regarding issuance of TDR, it is unnecessary to remand the case on the ground that original TDR should be called and the evidence towards the original TDR should be recorded. Therefore, the judgment and decree passed by the First Appellate Court is erroneous and is liable to be set aside.

6) Accordingly, the impugned judgment and decree is set aside and the case is sent back to the First Appellate Court with a direction that the said appeal should be decided on merit, keeping in view the observations made herein.

7) Both the parties are directed to appear before the First Appellate Court on 19.10.2005.

Parties to bear their own costs.

Sd/-
V.K.Shrivastava
Judge

09.09.2005

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